

II. REMARKS

Formal Matters

Claims 16-19 are pending after entry of the amendments set forth herein.

Claims 1-15 have been canceled and new claims 16-19 have been added to more particularly point out and distinctly claim the invention.

The new claims 16-19 are fully supported within the originally filed application.

Support for new claim 16 can be found within original claims 1, 7 and 9 as well as the added claims 14 and 15. Further, reference is made to the specification at paragraph [0036].

New claim 17 is supported within original claims 1, 7 and 10 and within the specification at paragraph [0037].

New claim 18 is supported within original claims 1, 7 and 11 and within the specification at paragraph [0039].

New claim 19 is supported within original claims 1 and 7 and within the specification at paragraph [0038].

Each of the new claims recites the specific sequences previously claimed within dependent claims 14 and 15. The new claims are within the elected invention and the elected peptide binding motif containing the RGD. No new matter has been added.

Obviousness-type double patenting

Claims 1, 2, 6-11, 14 and 15 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1-5, 7-9 and 12-24 of co-pending U.S. Patent Application No. 09/641,034.

The claims of the co-pending Application Serial No. 09/641,034 have been amended. Further, new claims have been presented here. It is applicants' position that the currently pending claims of the present application would not be subject to an obviousness-type double patenting rejection over the claims pending within the co-pending application. However, solely to expedite prosecution applicants have attached hereto a Terminal Disclaimer with respect to the co-pending application thereby rendering the rejection moot.

Rejection under 35 U.S.C. §112

Claims 1, 2 and 6-11 were rejected under 35 U.S.C. §112, first paragraph. The rejection is

traversed as applied and as it might be applied to the presently pending claims.

Applicants note that the rejection was not applied against claims 14 and 15 which recited specific sequences. All of the new claims 16-19 recite specific sequences. Accordingly, the rejection is believed to have been overcome.

Rejection under 35 U.S.C. §102(a)

Claims 1, 2, 7, 8, 14 and 15 were rejected under 35 U.S.C. §102(a) as allegedly anticipated by Rowe (WO 99/60017; "Rowe") or as obvious over Rowe.

The rejection is traversed as applied and as it might be applied to the presently pending claims.

Applicants note that the rejection was not applied against dependent claim 9 directed to a toothpaste formulation nor against claim 10 directed to a mouthwash formulation or dependent claim 11 directed to a patch. The new claims 16, 17 and 18 are directed, respectively, to toothpaste, mouthwash and a patch. New claim 19 is directed to a dental floss. None of these are disclosed or described within Rowe. Such appears to be recognized within the rejection.

The same rejection was also made with respect to U.S. Patent 6,673,900 to Rowe. This rejection is also traversed as applied and as it might be applied to the presently pending claims. However, as indicated above the rejection was not applied against previously pending now canceled claims 9, 10 and 11. It appears to have been recognized by the Examiner that the subject matter of these claims was neither anticipated by or rendered obvious in view of Rowe and the same is true with respect to the subject matter of new claim 19 directed to dental floss. Accordingly, these rejections are believed to have been overcome by the newly submitted claims 16-19.

Rejection under 35 U.S.C. §103

Claims 1, 2, 7-11, 14 and 15 were rejected under 35 U.S.C. §103 as allegedly unpatentable over Reynolds (U.S. Patent No. 5,015,628; "Reynolds") taken with Rowe.

The rejection is traversed as applied and as it might be applied to the presently pending claims.

First, applicants point out that Rowe does not disclose the specific sequences of SEQ ID NO:47 or SEQ ID NO:49. Rowe does disclose a larger sequence which includes the sequences but does not disclose the specific sequences. Applicants claim an invention wherein the peptide portion is limited to the specific recited sequences without including the additional amino acids recited by Rowe. Thus, Rowe does not present a *prima facie* case of obviousness. Notwithstanding this position applicants point out that applicants have demonstrated improved unexpected results which would overcome any *prima*

facie case of obviousness. The specific sequences recited within the newly added claims 16-19 show improved unexpected results relative to other sequences which are fragments of the larger sequence disclosed by Rowe. A summation of the results obtained by applicants' sequences is contained within the specification and shown within the Figures such as within Figure 4.

SEQ ID NO:47 is D-00004 shown in Figure 4 and SEQ ID NO:49 is D-00006 as shown in Figure 4. This is described in the specification such as in Example 1 beginning on page 25. It is applicants' position that it would not be obvious to combine Reynolds with Rowe. However, by combining Reynolds and Rowe one still does not obtain the specific peptide sequences of SEQ ID NO:47 or SEQ ID NO:49. Thus, even when combined with Reynolds there is no *prima facie* case of obviousness. Still further, the applicants have demonstrated improved unexpected results which would overcome any *prima facie* case of obviousness.

III. CONCLUSION

Claims 1-15 have been canceled and new claims 16-19 have been added. Amendments were also made to the claims within the co-pending application. Although applicants do not believe it to be necessary a Terminal Disclaimer is filed herewith rendering any obviousness-type double patenting rejection moot. The 35 U.S.C. §112 rejections were not applied against the claims which recited specific sequences and all of the new claims 16-19 recite specific sequences. The prior art comprising Rowe as taken by itself or in combination with Reynolds does not present a *prima facie* case of obviousness in that it does not teach towards the specific sequences recited within the specific SEQ ID NOS. of the newly added claims 16-19. Notwithstanding this position applicants have demonstrated improved unexpected results with respect to the sequences over other fragments of the larger sequence disclosed by Rowe thereby overcoming any *prima facie* case of obviousness. In view of such reconsideration and allowance of the application is respectfully requested.

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number BEAR006CIP.

Respectfully submitted,
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Date: 1/July/04

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